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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/692,187	10/23/2003	Adam John Darby	1170/39383C	8435

279 7590 09/20/2005

TREXLER, BUSHNELL, GIANGIORGI,
BLACKSTONE & MARR, LTD.
105 WEST ADAMS STREET
SUITE 3600
CHICAGO, IL 60603

EXAMINER

PERRIN, JOSEPH L

ART UNIT	PAPER NUMBER
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1746

DATE MAILED: 09/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/692,187

Applicant(s)

DARBY, ADAM JOHN

Examiner

Joseph L. Perrin, PhD

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 July 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) 1-5 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 6-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 July 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 20050428;20031023.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

DETAILED ACTION

Response to Arguments

1. In response to applicant's amendment to the Drawings, Specification and Title, the objections to the Drawings, Specification and Title have been withdrawn.
2. Applicant's arguments filed 11 July 2005 have been fully considered but they are not persuasive.
3. Regarding the rejection under 35 USC §112, first paragraph, the clarification of structure which reads on applicant's claimed "water level detection means" as readable on the "floating" spin tub in the disclosed U.S. Patent No. 4,813,248, does not adequately support the claimed scope including other structures and equivalents thereof of such "water level detection means". Applicant's arguments with respect to what structures read on the claimed "voltage monitoring means" and "peak current detections means" is not persuasive and the rejection under 35 USC §112, first paragraph, is maintained. Applicant's claimed "voltage monitoring means" fails to properly invoke 35 USC §112, sixth paragraph, because as stated on page 9 of the instant response the claimed voltage monitoring means reads on the microprocessor (controller), such structural limitation already being positively recited in claim 6. Similarly, applicant's claimed "peak current detection means" which reads on the structure of the microprocessor (controller) is already positively recited in claim 6. Since a controller is already positively recited, applicant's means plus function language, which reads on the microprocessor/controller, would not further limit the claim since the only disclosed microprocessor/controller is already being claimed. In other words, applicant's attempt to claim multiple functions of

the same controller with means plus function language is improper since the controller is already being claimed and further means plus function claim limitations which read on the controller fail to further limit the claim. If applicant is attempting to claim the structural configuration of the disclosed microprocessor/controller, applicant is urged to apply configuration language such as "configured to...". However, it is noted that such language would require further consideration and search.

4. Regarding the rejection over CHEYNE, applicant argues that CHEYNE does not disclose a PWM controller of variable frequency or a mechanism to detect water level or a controller which, in response to the water level detection means, decreases the inverter's frequency. The Examiner disagrees. Regarding the PWM controller, varying the frequency of the PWM controller is intended use and afforded little patentable weight. CHEYNE is fully capable of performing such function, as shown by Figures 3 & 6 which are similar to applicant's PWM controller in amended Figure 4. Regarding the water level detection means, as clearly noted in the previous Office Action CHEYNE discloses controlling water level. An ordinary skilled artisan would at once envisage that controlling water level would require means for detecting water level in order to control water level. Thus, the disclosure of CHEYNE reads on applicant's broad limitation of "water level detection means". Regarding the controller, the intended use of the claimed controller, "which, in response to the water level detection means, decreases the inverter's frequency", is considered intended use and afforded little patentable weight. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to

patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In the instant case, the electronic controller of CHEYNE is capable of performing such functions since the controller is electrically arranged similar to applicant's electrical system. Furthermore, it has been held that claims directed to apparatus must be distinguished from the prior art in terms of structure rather than function. *In re Danly*, 263 F.2d 844, 847, 120 USPQ 528, 531 (CCPA 1959). "[A]pparatus claims cover what a device *is*, not what a device *does*." *Hewlett-Packard Co. v. Bausch & Lomb Inc.*, 909 F.2d 1464, 1469, 15 USPQ2d 1525, 1528 (Fed. Cir. 1990). (emphasis in original)

Claim Rejections - 35 USC § 112

5. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

6. Claims 6-10 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The body of this rejection is repeated here from the previous Office Action.

Claim Rejections - 35 USC § 102

7. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

8. Claims 6-10 rejected under 35 U.S.C. 102(b) as being anticipated by CHEYNE. The rejection over CHEYNE is repeated here from the previous Office Action.

Conclusion

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

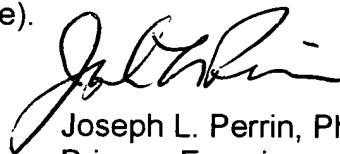
10. A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph L. Perrin, PhD whose telephone number is (571)272-1305. The examiner can normally be reached on M-F 7:00-4:30, except alternate Fridays.

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12. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael E. Barr can be reached on (571)272-1414. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

13. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Joseph L. Perrin, PhD
Primary Examiner
Art Unit 1746

jlp